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ZNR UUUUU ZZH
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FM AMEMBASSY KUWAIT
TO RUEHC/SECSTATE WASHDC IMMEDIATE 2173
INFO RUEHZM/GULF COOPERATION COUNCIL COLLECTIVE IMMEDIATE
RUEAWJA/DEPT OF JUSTICE WASHDC IMMEDIATE
RUEATRS/DEPT OF TREASURY WASHDC IMMEDIATE

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DEPT FOR INL
DEPT FOR NEA/ARPI SWALKER, NEA/RA
DEPT FOR EB/ESC/TFS,
DEPT FOR S/CT TKUSHNER, ,
DEPT FOR IO/PSC BFITZGERALD
JUSTICE FOR OIA , AFMLS,
TREASURY FOR FINCEN

E.O. 12958: N/A
TAGS: KTFN ETTC EFIN PTER PREL KU
SUBJECT: 2005-2006 INTERNATIONAL NARCOTICS CONTROL STRATEGY
REPORT (INCSR) INSTRUCTIONS PART II, FINANCIAL CRIMES AND
MONEY LAUNDERING-KUWAIT COUNTRY REPORT

REF: STATE 210324

¶1. (U) Post's input for Part II of the 2005-2006 INCSR follows in para 2. An updated redlined country write-up has been emailed to rindlerep (AT) state.gov per reftel instructions.

2.(U) BEGIN TEXT OF REPORT.

Kuwait
The Government of Kuwait should significantly accelerate its ongoing efforts to revise its 2002 anti-money laundering law (Law No. 35/2002), improve the sharing of financial information, strengthen its Financial Intelligence Unit's structure and responsibilities, including obtaining membership in the Egmont Group, and criminalize terrorist financing. Kuwait should expand the practice of in-bound currency reporting beyond its Abdaly Port on the Iraqi border to include all other ports of entry. Kuwait should also make outbound currency and precious metals declarations mandatory. More interagency cooperation, technical assistance, and coordination between the Kuwaiti Financial Intelligence Unit (KFIU) and other concerned parties, including Kuwait Customs, could yield significant improvements in proactive investigations and international information exchange. The KFIU's role and organizational structure should be enhanced to include full-time members representing relevant GOK agencies, including those from the National Committee. The KFIU should be allowed to independently share financial information with its foreign counterparts, and receive, analyze, and disseminate suspicious transaction reports without obtaining prior authorization from the Office of the Public Prosecutor (OPP). Kuwait should continue to enhance its charity oversight efforts, including increased coordination and diligence with third countries and organizations receiving assistance from Kuwaiti charities. Kuwait should also become a party to both the UN International Convention for the Suppression of the Financing of Terrorism and the UN Convention against Transnational Organized Crime.
Kuwait, although not a major regional financial sector, is experiencing unprecedented economic growth that is increasing the country's regional financial influence. The Central Bank of Kuwait regulates banks, investment companies, exchange companies and mutual funds.

Kuwait's banking sector is comprised of specialized, Islamic and commercial banks. There are two specialized banks: Kuwait Real Estate Bank (KREB), undergoing conversion into an Islamic bank, and the government-owned Industrial Bank of Kuwait. Both of these banks provide medium and long-term financing. With the conversion of KREB, there will be three Islamic banks to include Kuwait Finance House (1977) and Boubyan Bank (2004). The seven Kuwaiti commercial banks include National Bank of Kuwait (1952), Commercial Bank of Kuwait (1960), Gulf Bank (1960), Al-Ahli Bank of Kuwait (1967), The Bank of Kuwait and the Middle East (1971), Burgan Bank (1976) and Branch Bank of Bahrain and Kuwait (1977), all of which provide traditional banking services comparable to Western-style commercial banks.

The banking sector was opened to foreign competition under the 2001 Direct Foreign Investment Law and the Central Bank has already granted licenses to four foreign banks. However, while foreign banks may now operate in Kuwait, they are restricted to opening only one branch. BNP Paribas, National Bank of Abu Dhabi and HSBC are already doing business in Kuwait, while Citibank expects to begin operations in 2006.

On March 10, 2002, the Emir (Head of State) of Kuwait signed Law No. 35, which criminalizes money laundering. The law stipulates that banks and financial institutions may not keep or open any anonymous accounts or accounts in fictitious or symbolic names, and that banks must require proper identification of regular and occasional clients. The law also requires banks to keep all records of transactions and customer identification information for a minimum of five years, conduct training and establish internal control systems, and report any suspicious transactions. Regulators do not believe that money-laundering is a serious problem,

and most money laundering operations are generated as a byproduct of local alcohol and drug smuggling into the country. Revenue from the sale of counterfeit goods, including narcotics, is considered to be significant.
Law No. 35/2002 designates the OPP as the sole authority to receive reports, including suspicious transaction reports (STRs), and take appropriate investigative action on money laundering operations. The law provides for a penalty of up to seven years' imprisonment in addition to fines and asset confiscation. The penalty is doubled if an organized group commits the crime, or if the offender took advantage of his influence or his professional position. Moreover, banks and financial institutions may face a steep fine (approximately $3.3 million) if found in violation of the law. Law 35/2002 does not cite terrorist financing as a crime; however, the definition of criminal activity is broad.
The law includes articles on international cooperation, and on monitoring cash and precious metals transactions. Currency smuggling into Kuwait is also outlawed under Law No. 35/2002, although reporting requirements are not enforced at ports of entry. Provisions of Article 4 of Law No. 35/2002 state that every person shall, upon entering the country, inform the customs authorities of any national or foreign currency, gold bullion, or any other precious materials in his/her possession, valued in excess of Kuwait dinars 3,000 (about $10,000). However, the law does not require individuals to file customs declarations when carrying cash or precious metals out of Kuwait. The law authorizes the Minister of Finance to set forth the resolutions necessary to ensure its implementation. The Minister of Finance, as stipulated by Law No. 35/2002, has issued resolutions to enhance combating money laundering operations, without actually amending the legislation. Several cases have been opened under Law No. 35/2002, but the majority of them were closed after investigations did not disclose prosecutable offenses. Only two cases have gone to courts. The OPP's AML bureau can benefit from technical assistance and training. The Department of Homeland Security's Immigration and Customs Enforcement office is considering providing training to the OPP's AML office to enhance the Prosecutor's legal awareness and methodology to

result in successful prosecutions of AML cases.
In addition to Law No. 35/2002, anti-money laundering reporting requirements and other rules are contained in the Central Bank's instructions No. (2/sb/92/2002), which took effect on December 1, 2002, superseding instructions No. (2/sb/50/97). The revised instructions provide for, inter alia, customer identification and the prohibition of anonymous or fictitious accounts (Articles 1-5); the requirement to keep records of all banking transactions for five years (Article 7); electronic transactions (Article 8); the requirement to investigate transactions that are unusually large or have no apparent economic or lawful purpose (Article 10); the requirement to establish internal controls and policies to combat money laundering and terrorism finance, including the establishment of internal units to oversee compliance with relevant regulations (Article 14 and 15); and, the requirement to report to the Central Bank all cash transactions in excess of $10,000 (Article 20). In addition, the Central Bank distributed detailed instructions and guidelines to help bank employees identify suspicious transactions. At the Central Bank's instructions, banks are no longer required to block assets for 48 hours on suspected accounts in an effort to avoid "tipping off" suspected accountholders. The Central Bank, upon notification from the Ministry of Foreign Affairs (MFA), will issue circulars to units subject to supervision requiring them to freeze the assets of individuals and/or organizations designated under Presidential Executive Order 13224 or the UN 1267 Committee. Financial units freeze assets immediately for an indefinite period of time pending further instructions from the Central Bank, which in turn receives its designation guidance from the MFA.
Kuwait has two Islamic banks, Kuwait Finance House (KFH) and Boubiyan Bank, which are both licensed and supervised by the Central Bank. As of May 31, 2004, KFH came fully under the supervision of the Central Bank, and has been cooperative with its offices, as have all other Islamic investment companies. Boubiyan Bank was established by the Kuwaiti Investment authority (KIA) and is in the process of being formed, after its May 2004 initial public offering. The
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Kuwait Real Estate Bank, which has been one of Kuwait's two "specialized banks," is in the process of converting to an Islamic bank. The Central Bank has been working on bringing Islamic financial institutions under its supervision since before the terrorist attacks of September 11, 2001. In addition, the Central Bank issued circular No. (2/sb/95/2003) in 2003, which is directed toward money changing companies (can engage in wire transfers, selling and buying drafts and travelers checks), and which contains similar instructions with respect to combating money laundering and suspicious activities reporting guidelines. Also, the Central Bank recently issued updated AML/CFT regulations directed toward Investment Companies. A similar order (31/2003) was issued by the Kuwait Stock Market to all companies under its jurisdiction. There are about 130 money exchange businesses (MEBs) operating in Kuwait (authorized only to exchange foreign currency), none of which are companies, and therefore, are not under the supervision of the Central Bank but rather under the Ministry of Commerce and Industry. The Central Bank has reached an agreement with the Ministry of Commerce and Industry to enforce all anti-money laundering (AML) laws and regulations in supervising such businesses. Furthermore, the Ministry will work diligently to encourage the MEBs to apply for and obtain company licenses and register with the Central Bank.
The Ministry of Commerce and Industry, through its AML bureau, supervises insurance companies, exchange bureaus, gold and precious metals shops, brokers in the Kuwait Stock Exchange, and all other financial brokers. Since September 2002, these firms must abide by all regulations concerning customer identification, record keeping of all transactions for five years, establishment of internal control systems, and the reporting of suspicious transactions.
In April 2004, the Ministry of Finance issued Ministerial Decision No. 11 (MD No. 11/224), which transferred the

chairmanship of the National Committee for Anti-Money Laundering and the Combating of the Financing of Terrorism, formerly headed by the Minister of Finance, to the Governor of the Central Bank. The Committee is comprised of representatives of the Ministries of Interior, Foreign Affairs, Commerce and Industry, Social Affairs and Labor, and Finance; Office of Public Prosecution; Kuwait Stock Exchange; General Customs Authority; the Union of Kuwaiti Banks; and the Central Bank. Since its inception, the National Committee has been gradually pursuing its mandate of drawing up the country's strategy and policy with regard to anti-money laundering and terrorist financing; drafting a new law that, when completed, is expected to criminalize terrorist financing along with other pertinent regulations; coordinating between the concerned ministries and agencies in matters related to combating money laundering and terrorist financing; following up on domestic, regional, and international developments, and making needed recommendations in this regard; setting up appropriate channels of communication with regional and international institutions and organizations; and representing Kuwait in domestic, regional, and international meetings and conferences. In addition, Article Seven entrusts the Chairman of the Committee with issuing regulations and procedures that he deems appropriate for the Committee duties and responsibilities and the organization of its activities.

Following the September 11, 2001, attacks against the United States, certain Islamic charity organizations such as the Revival of Islamic Heritage Society (RIHS) and its subsidiary, the Afghan Support Committee (ASC), which operate from Kuwait and have branches in Pakistan and Afghanistan, were suspected of providing funds to al-Qaida. However, there is no indication that such activities occurred with the knowledge of the Kuwaiti head office, which remains undesignated; U.S. authorities have only designated the branches in Pakistan and Afghanistan as having been used to funnel funds to terrorist organizations. The RIHS, like other charitable organizations, is under the supervision of the Ministry of Labor and Social Affairs.

In August 2002, the Kuwaiti Ministry of Social Affairs and Labor issued a ministerial decree creating the Department of Charitable Organizations. The primary responsibilities of the department are to receive applications of registration from charitable organizations, monitor their operations, and establish a new accounting system to insure that such organizations comply with the law both at home and abroad. The Department has established guidelines to charities explaining donation collection procedures and regulating financial activities. The new Department is also charged with conducting periodic inspections to ensure that they maintain administrative, accounting, and organizational standards according to Kuwaiti law. Further, the Department mandates the certification of charities' financial activities by external auditors and limits the ability to transfer funds abroad to select charities approved by the Ministry. The Ministry also requires all fund transfers abroad to be made between authorized charity officials. Banks and Exchange Companies are not allowed to transfer any charity money outside of Kuwait without prior permission from the Ministry. In addition, such wire transactions must be reported to the Central Bank, which maintains a monthly database of all transactions conducted by charities. Unauthorized public donation kiosks and zakat (alms) collection in mosques are also prohibited. During the 2005 Ramadan season, the Ministry introduced a new pilot program requiring charities to raise donations through the sale of government-provided coupons.

On June 23, 2003, the Central Bank issued Resolution No. 1/191/2003, establishing the Kuwaiti Financial Inquiries Unit (KFIU) as an independent entity within the Central Bank. The KFIU is comprised of seven part-time Central Bank officials and headed by the Central Bank Governor. The responsibilities of the KFIU are to receive and analyze reports of suspected money laundering from the OPP, to

establish a database of suspicious transactions, to conduct anti-money laundering training, and to carry out domestic and international exchanges of information in cooperation with the OPP. Law No. 35/2002 did not establish the FIU as the central unit for the receipt, analysis, and dissemination of the suspicious transaction reports (STR) information; instead, these critical functions were divided between the KFIU and OPP. Unlike the United States, banks in Kuwait are required to file STRs with the OPP, rather than directly with the KFIU. Based on an MOU with the Central Bank, STRs are referred from the OPP to the KFIU for analysis. The KFIU conducts analysis and reports any findings to the OPP for the initiation of a criminal case, if necessary. The KFIU's access to information is limited by its lack of membership in the Egmont Group, resulting mainly from the KFIU's inability to share information abroad without the approval of the OPP. Kuwaiti officials agree that the current limits on information sharing by the FIU are a problem that requires amending of the law, currently under revision by the National Committee.
Kuwait is a member of the Gulf Cooperation Council (GCC), which is itself a member of the Financial Action Task Force (FATF). In November 2004, Kuwait signed the memorandum of understanding governing the establishment of the Middle East and North Africa Financial Action Task Force (MENAFATF). Kuwait is one of the fourteen charter members of this FATF-style regional body that was inaugurated in Bahrain to promote best practices to combat money laundering and terrorist financing in the region. Kuwait has increasingly taken on a leadership role in the MENA/FATF through its active participation and initiative in co-drafting documents on charities oversight, among others. The Central Bank will also host a MENA/FATF seminar in December 2005 in Kuwait to train assessors to evaluate countries' compliance with AML/CFT regulates based on WB/IMF methodology.
Kuwait has signed the 1988 UN Drug Convention. It has signed, but not yet ratified, the UN Convention against Transnational Organized Crime. Kuwait, although a signatory, has not yet ratified the UN International Convention for the Suppression of the Financing of Terrorism.
Kuwait is making progress in enforcing its anti-money laundering program, including the pending legal reform of Law No. 35/2002. The issuance of the Ministry of Finance Decree 11/2004 concerning the new duties of the National Committee for Anti-Money Laundering and the Combating of the Financing of Terrorism represents an important development. The National Committee is expected to approve the long-anticipated draft law in early 2006 with subsequent approval and adoption by the Council of Ministers (Cabinet) and National Assembly. Efforts should be made by Kuwaiti officials to expedite this important process. Kuwaiti

officials acknowledge and welcome extensive training for all involved sectors to strengthen internal policies and procedures. In December 2005, the Kuwait General Administration of Customs hosted a conference, in conjunction with the Department of Homeland Security's Immigration and Customs Enforcement division, focusing on measures to combat cash smuggling.

END OF TEXT OF REPORT.

Lebaron